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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 LINDA SANDERS, on behalf of
12 herself and all others similarly
situated,

13 Plaintiff,

14 v.

15 RBS CITIZENS, N.A.,

16 Defendant.
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Case No. 13-cv-3136-BAS-RBB

**ORDER GRANTING MOTION
FOR ATTORNEYS' FEES,
COSTS, AND INCENTIVE
AWARD**

19 Plaintiffs' counsel files a Motion for Attorneys' Fees, Costs and Incentive
20 Award requesting \$1,137,816.88 in attorneys' fees, \$17,693.46 reimbursement for
21 litigation costs, \$874,249.20 in administration costs and \$5,000 as an incentive award
22 for the named Plaintiff Linda Sanders. (ECF No. 108.) Defendant does not oppose.
23 The Court held a hearing on the issue on January 23, 2017 at 10:30 a.m. After
24 reviewing the Motion along with the attached Exhibits, the Court **GRANTS**
25 Plaintiffs' Motion for Attorneys' Fees, Costs and Incentive Award.

26 **I. STATEMENT OF FACTS**

27 **A. Underlying Case**

28 On December 20, 2013, Plaintiffs filed a civil class action alleging violations

1 of the Telephone Consumer Protection Act, 47 U.S.C. §§227 et seq. (“TCPA”). (ECF
 2 No. 1.) Plaintiffs allege Defendant used an automated telephone dialing system
 3 (“ATDS”) and prerecorded voice messages to call the cellular telephones of class
 4 members when attempting to collect student loan debts. (*Id.*) Defendant denies the
 5 allegations but agrees to this settlement to avoid further litigation.

6 During the course of the litigation, counsel served third party discovery to
 7 twenty-one third party vendors, conducted discovery motion practice and engaged in
 8 a day-long mediation with the Hon. Edward A. Infante (Ret.). (*See* Declaration of
 9 Douglas J. Campion in Support of Motion for Attorneys’ Fees, Costs and Incentive
 10 Payments (ECF No. 108-2) (“Campion Decl.”) ¶ 12; Declaration of Ronald A.
 11 Marron in Support of Motion for Attorneys’ Fees, Costs and Incentive Payments
 12 (ECF No. 108-5) (“Marron Decl.”) ¶¶ 30-37.) Post-mediation, the attorneys
 13 continued to conduct confirmatory discovery to locate class members. (*Id.*)

14 **B. Settlement and Attorneys’ Fees**

15 The Settlement contemplates that Defendant “shall pay \$4,551,267.50 to
 16 settle the Action and obtain a full release from Settlement Class Members of all
 17 Released Claims.” (Settlement Agreement and Release attached to the Declaration
 18 of Douglas Campion in Support of Preliminary Approval (ECF No. 104-3
 19 (“Settlement Agreement”) at § 5.01.) “The amount paid per Approved Claim shall
 20 be divided among the approved claimants on a pro rata basis from the amount
 21 remaining in the Settlement Fund after payment of all Settlement Costs [including
 22 attorneys’ fees] from the Settlement Fund.” (*Id.* at § 5.02.) “Class Members shall
 23 be entitled to submit a claim if their cellular phone number is on the Class List as a
 24 phone number that received a Telephone Call during the Class Period. Only one
 25 claim for each phone number called shall be permitted.” (*Id.* at § 5.03.) “As an
 26 additional benefit to all Class Members, [Defendant] has developed significant
 27 enhancements to its existing policies and procedures, as necessary, to require that if
 28 any person revokes his or her consent by any reasonable means, that person shall

1 not receive any further calls from [Defendant] on his or her cellular telephone via an
 2 automatic telephone dialing system and/or an artificial or prerecorded voice.” (*Id.*
 3 at § 5.04.)

4 The Claims Administrator has sent notice to Class Members and 41,307
 5 members have submitted claims. (Declaration of Steven J. Powell on Behalf of
 6 Claims Administrator (ECF No. 112-4) (“Powell Decl.”) ¶¶ 14-15.) In light of the
 7 number of claimants, the settlement amount for each class member is estimated to
 8 be \$60.89. (Memorandum of Points and Authorities in Support of Unopposed
 9 Motion for Final Approval of Class Action Settlement (ECF No. 112-1), p. 11.)
 10 Plaintiffs’ attorneys request \$1,137,816.88 as 25% of the overall class settlement.
 11 (ECF No. 108.) Alternatively, counsel detail actual attorneys’ fees in the amount
 12 of \$600,059.50 to which counsel requests the Court apply a 1.896 multiplier for the
 13 result received. (Campion Decl. ¶ 14; Marron Decl. ¶ 28; Supplemental Declaration
 14 of Ronald A. Marron In Support of Motion for Attorneys’ Fees, Costs and Incentive
 15 Payment, ¶ 4.)

16 Plaintiffs’ counsel further requests \$17,693.46 in costs (excluding the costs of
 17 administering the class), which includes the cost of mediation, mileage to attend the
 18 mediation, court reporter fees, filing fees, subpoena fees and payment for the expert
 19 witness. (Campion Decl. ¶17; Marron Decl. ¶¶ 2-3.) Counsel further requests
 20 reimbursement of \$874,249.20 for the costs of administering the class. (Powell
 21 Decl., Exh. D.) Finally, counsel requests a \$5000 incentive payment for named
 22 plaintiff Linda Sanders. (ECF No. 108.) Ms. Sanders files a Declaration indicating
 23 that she spent 30–40 hours on this case including meeting with counsel before the
 24 Complaint was filed, appearing in person at the ENE, responding to discovery
 25 including interrogatories and documents requests, and reviewing and approving the
 26 Settlement Agreement. (Declaration of Linda Sanders in Support of Incentive
 27 Award (ECF No. 108-4) (“Sanders Decl.”) ¶¶ 4-8.)

28 **II. LEGAL STANDARD**

1 Courts have an independent obligation to ensure that the attorneys' and class
 2 representative fees award, like the settlement, is reasonable. *In re Bluetooth Headsets*
 3 *Prods. Liab. Litig.*, 654 F.3d 935, 941 (9th Cir. 2011). Where a settlement produces
 4 a common fund for the benefit of the entire class, the courts have the discretion to
 5 employ a "percentage of recovery method." *Id.* at 942. Typically, courts calculate
 6 25% of the fund as a "bench mark" for a reasonable fee award. *Id.* Injunctive relief
 7 should generally be excluded from the value of the common fund when calculating
 8 attorneys' fees because most often the value of the injunctive relief is not measurable.
 9 *Staton v. Boeing Co.*, 327 F.3d 938, 945–46 (9th Cir. 2003).

10 The 25% benchmark rate, "although a starting point for analysis, may be
 11 inappropriate in some cases." *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th
 12 Cir. 2002). Thus, court are encouraged to cross-check this method by employing the
 13 "lodestar method" as well. *In re Bluetooth*, 654 F.3d at 949.

14 In the "lodestar method," the Court multiplies the number of hours the
 15 prevailing party reasonably expended by a reasonable hourly rate for the work. *Id.* at
 16 941. The hourly rate may be adjusted for the experience of the attorney. *Id.* "Time
 17 spent obtaining an attorneys' fee in common fund cases is not compensable because
 18 it does not benefit the Plaintiff class." *In re Washington Public Power Supply Sys.*
 19 *Secs. Litig.*, 19 F.3d 1291, 1299 (9th Cir. 1994). The resulting amount is
 20 "presumptively reasonable." *In re Bluetooth*, 654 F.3d at 949. However, "the district
 21 court . . . should exclude from the initial fee calculation hours that were not
 22 'reasonable expended.'" *Sorenson v. Mink*, 239 F.3d 1140, 1146 (9th Cir. 2001)
 23 (quoting *Hensley v. Eckerhart*, 401 U.S. 424, 433–34 (1983)). The Court may then
 24 adjust this presumptively reasonable amount upward or downward by an appropriate
 25 positive or negative multiplier reflecting a whole host of reasonableness factors
 26 including the quality of the representation, the complexity and novelty of the issues,
 27 the risk of nonpayment, and, foremost in considerations, the benefit achieved for the
 28

1 class. *In re Bluetooth*, 654 F.3d at 942.

2 “[I]ncentive awards that are intended to compensate class representatives for
3 work undertaken on behalf of a class are fairly typical in class actions cases” and “do
4 not, by themselves, create an impermissible conflict between class members and their
5 representative[.]” *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th
6 Cir. 2015). Nonetheless, the Court has obligation to assure that the amount requested
7 is fair. *In re Bluetooth*, 654 F.3d at 941.

8 **III. ANALYSIS**

9 Turning first to the “percentage of recovery method” of recovery, the Court
10 notes that the amount requested is 25% of the overall recovery. Thus, using the
11 percentage of recovery method, the Court finds the amount requested appears
12 reasonable.

13 However, as directed, the Court cross-checks this amount by applying the
14 lodestar method. Counsel document the number of hours worked and the hourly rate
15 billed for the work. The Court finds both to be reasonable. The resulting amount of
16 \$600,059.50 is “presumptively reasonable.” *See In re Bluetooth*, 654 F.3d at 949. In
17 this case, however, the Court finds it is appropriate to adjust this amount upward by
18 the multiplier requested. This case has been pending for three years, during which
19 time Plaintiffs’ counsel received no payment for their work. They fronted the costs,
20 faced a real risk of no recovery, and ultimately achieved a strong result for the class.
21 Therefore, the requested multiplier of 1.896 is an appropriate request. Cross-
22 checking, therefore, with the lodestar method, the Court finds the requested 25%
23 recovery is reasonable.

24 Plaintiff also requests \$17,693.46 in costs. “There is no doubt that an attorney
25 who has created a common fund for the benefit of the class is entitled to
26 reimbursement of reasonable litigation expenses from that fund.” *Ontiveros v.*
27 *Zamora*, 303 F.R.D. 356, 375 (E.D. Cal. 2014) (quotations omitted). “District courts
28 have discretion to reimburse expert witness fees if the expert’s services were ‘crucial

1 or indispensable' to the action.” *Rodriguez v. Farmers Ins. Co. of America*, 649 F.
2 App’x 620 (9th Cir. 2016) (unpublished) (citation omitted). The Court has reviewed
3 the detailed requests and finds these amounts are reasonable and necessary.

4 Plaintiff additionally requests \$874,249.20 for the costs of administering the
5 class. At the oral final settlement hearing, the Court expressed concern that the
6 originally estimated amount for administering the class had increased so
7 precipitously. Counsel explained that the originally estimated costs were based on
8 mailing to 971,000 class members. As detailed by Mr. Powell, however, because of
9 multiple addresses and the large number of “returned as undeliverable” notices, the
10 class administrator ended up mailing postcards to 1,372,443 addresses. (Powell
11 Decl.) The Court notes that the bill from the class administrator includes a much
12 higher first class postage rate of \$481,821.48. (Powell Decl., Exh. D.) Although the
13 Court continues to be concerned about the increase, ultimately the Court finds the
14 requested amount is reasonable.

15 Finally, Plaintiff requests \$5,000 in incentive award for named plaintiff Linda
16 Sanders. Although this amount greatly exceeds the amount awarded to each class
17 member and exceeds the amount of statutory damages, the amount is reasonable in
18 light of the amount of work Ms. Sanders expended on the case.


19 **IV. CONCLUSION**

20 For the reasons stated above, the Court **GRANTS** Plaintiff’s Motion for
21 Attorneys’ Fees, Costs and an Incentive Award. (ECF No. 108.) The Court grants
22 Plaintiff \$1,137,816.88 in attorneys’ fees, \$17,693.46 in litigation costs, \$874,249.20
23 in administration costs and \$5,000 for the named plaintiff as an incentive award. The
24 Court authorizes that these amounts be paid from the Settlement Fund. The attorneys’
25 fees may be paid in cash and a portion in future periodic payments. The Law Offices
26 of Ronald A. Marron shall be entitled to receive its portion of the awarded attorneys’
27 fees immediately, according to the terms in the Settlement Agreement. Fees payable
28 to The Law Offices of Douglas J. Campion, APC (“Campion”), shall be paid by the

1 claims administrator to the assignment company upon receipt of that payment
2 pursuant to the terms of the Settlement Agreement. Campion shall receive its
3 attorneys' fees in periodic payments according to the agreements with the assignment
4 company. Campion has no present right to payment of its attorneys' fees. Prior to
5 the payment by the claims administrator to the assignment, Campion shall indemnify
6 and hold harmless the claims administrator. The Court authorizes the claims
7 administrator to execute the necessary documents to effectuate the fee deferral.

8 **IT IS SO ORDERED.**

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10 **DATED: January 25, 2017**

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13 **Hon. Cynthia Bashant**
14 **United States District Judge**
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